

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Billy Jones,

Plaintiff

vs.

No. 1:12-CV-00565 KG/LFG

**Danny Pacheco, a City of Espanola
Police Officer, and Sergeant Richard
Gallegos, a City of Espanola Police Officer, and,
Lieutenant Christina Lopez, a City of Espanola Police Officer,
Defendant City of Espanola, a municipality,**

Defendants,

**PLAINTIFF'S OPPOSED MOTION TO AMEND
COMPLAINT AND SUBSTITUTE THE PARTY PLAINTIFF**

Pursuant to Federal Rule of Civil Procedure 15(a) and 25, Plaintiff moves for leave to amend his complaint, and substitute Billy Jones, who is now an adult, as the Plaintiff. Plaintiff attaches the proposed amended complaint hereto. The amendment seeks to add a claim against Defendant City for alleged violations of Title II of the Americans with Disabilities Act. The factual basis for the City's liability is more fully detailed in the proposed amended complaint attached hereto. Defendants' counsel has been contacted and due to her being out of town, cannot respond with her position on this motion until Monday, November 4, 2013. She has instructed Plaintiff's counsel to note her position as "opposed" until she can provide her position.

A motion for summary judgment for Count I with regards to Defendant law enforcement officers currently is pending in the Court. Discovery has been stayed pending a decision on the summary judgment motion. The last pleading filed for this case was Defendants' Reply in support of their Motion for Summary Judgment [Doc. 52] filed on April 25, 2013. There is no dispositive motion pending regarding claims against Defendant City. Therefore, litigation will continue against Defendant City regardless of the Court's finding on the pending motion, and

Defendant City will not be prejudiced with this Amendment as Plaintiff does not oppose discovery directed to the issue raised.

Pursuant to Rule 15(a)(2), the district court should grant leave to amend “when justice so requires.” The rule has been read to require Defendants to provide a reason why the amendments should not be granted. Federal Civil Rules Handbook, Baicker-McKee, Janssen, Carr p. 547 n. 22 (West 2011)(“In practice the burden is usually on the party opposing the amendment to demonstrate why the amendment should not be permitted.”); Viernow v. Euripedes Development, 157 F3d 785, 799 (10th Cir. 1998). In addition, the filing of this motion comes before any scheduling conference and no case management deadlines are in place.

WHEREFORE, Plaintiff requests leave to file the Amended Complaint attached hereto.

Respectfully Submitted,

KENNEDY LAW FIRM

/s/ Joseph P. Kennedy

Joseph P. Kennedy
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I hereby certify that I served the above pleading on all parties by electronically filing it with the CM/ECF system this 1st day of November, 2013.

/s/ Joseph P. Kennedy
Joseph P. Kennedy